

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DARCY GRIEVE,

Plaintiff,

v.

Civil Action No. _____

CREDIT BUREAU COLLECTION
SERVICES, INC.,

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. This is an action for actual and statutory damages brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter "FDCPA") and the Telephone Consumer Protection Act of 1991 (hereinafter referred to as the "TCPA").

II. JURISDICTION AND VENUE

2. Subject matter jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. § 1331, and/or 28 U.S.C. § 1337.
3. That Plaintiff's cause of action under the TCPA is predicated upon the same facts and circumstances that give rise to her federal cause of action. As such, this Court has supplemental jurisdiction over Plaintiff's TCPA causes of action pursuant 28 U.S.C. § 1367.
4. Venue is proper in this district under 28 U.S.C. § 1391(b) in that the Defendant transacts business here and the conduct complained of occurred here.

III. PARTIES

5. Plaintiff Darcy Grieve is a natural person residing in the County of Erie and State of New York and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).
6. Defendant Credit Bureau Collection Services, Inc., (hereinafter "CBCS") is a foreign business corporation organized and existing under the laws of the State of Ohio and is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6).
7. That at all times relevant herein, Plaintiff was and is a "person" as defined by 47 U.S.C. § 153(32).

8. That Defendant, at all times relevant herein, owned, operated and/or controlled “customer premises equipment” as defined by 47 U.S.C. §153(14), that originated, routed, and/or terminated telecommunications.
9. That at all times relevant herein, Defendant has used the United States mail service, telephone, telegram and other instrumentalities of interstate and intrastate commerce to attempt to collect consumer debt allegedly owed to another.
10. That Defendant, at all times relevant herein, engaged in “interstate communications” as that term is defined by 47 U.S.C. §153(22).
11. That Defendant, at all times relevant herein, engaged in “telecommunications” as defined by 47 U.S.C. §153(43).
12. That Defendant, at all times relevant herein, used, controlled and/or operated “wire communications” as defined by TCPA, 47 U.S.C. §153(52), that existed as instrumentalities of interstate and intrastate commerce.
13. That Defendant, at all relevant times herein, used, controlled and/or operated “automatic telephone dialing systems” as defined by TCPA, 47 U.S.C. §227(a)(1) and 47 C.F.R. 64.1200(f)(1).
14. Defendant regularly attempts to collect debts alleged to be due another.
15. The acts of the Defendant alleged hereinafter were performed by its employees acting within the scope of their actual or apparent authority.
16. All references to “Defendant” herein shall mean the Defendant or an employee of the Defendant.

IV. FACTUAL ALLEGATIONS

17. That Plaintiff Grieve incurred two bills for medical services. These debts will be referred to collectively as “the subject debt.”
18. That the subject debt arose out of a transaction in which money, services or property, which was the subject of the transaction, was primarily for personal, family and/or household purposes. As such, said debt is a “debt” as that term is defined by 15 U.S.C. §1692a(5).
19. That Plaintiff Grieve defaulted on the subject debt.
20. That upon information and belief Defendant CBCS was thereafter employed to collect the subject debt.
21. That in or about August of 2008, Defendant began calling Plaintiff’s cellular telephone multiple times per week in an attempt to collect on the subject debt.

22. That in the first of the calls described in paragraph 13 herein, Plaintiff answered the telephone and spoke with Defendant. During the course of the conversation, Plaintiff stated to Defendant that he did want them to call his cellular telephone again in the future.
23. Notwithstanding Plaintiff's request that they not call him on his cellular telephone, Defendant continued to call Plaintiff's cellular telephone. On multiple occasions, Defendant left voice recorded and/or prerecorded messages on Plaintiff's cellular telephone voice messaging service requesting that he contact them.
24. That also in or about August of 2008, despite already possessing Plaintiff's proper location and contact information, Defendant called the home telephone of Plaintiff's mother-in-law, Irena LeBlanc. Defendant stated that Plaintiff had used Ms. LeBlanc as a reference and wanted to confirm Plaintiff's address and telephone number with her. Ms. LeBlanc refused to give said information. Defendant then asked Ms. LeBlanc to give Plaintiff a message that Defendant had called. Pursuant to Defendant's request, Ms. LeBlanc relayed the message to Defendant.
25. That Defendant thereafter called Irena LeBlanc multiple times in an attempt to collect on the subject debt. During the course of these calls, Defendant disclosed to Ms. LeBlanc that Plaintiff owed a debt.
26. That as a result of Defendant's acts Plaintiff became nervous, upset, anxious, and suffered from emotional distress.

V. COUNT ONE

(Fair Debt Collection Practices Act
and 15 U.S.C. §1692 et seq.)

27. Plaintiff repeat, re-allege and incorporate by reference the allegations contained in paragraphs 1 through 26 above.
28. The conduct of Defendant as described in this complaint violated the Fair Debt Collection Practices Act (15 U.S.C. §1692 et seq.) as follows:
 - a. Defendant violated 15 U.S.C. §1692b(1), 15 U.S.C. §1692b(2), 15 U.S.C. §1692b(3) and 15 U.S.C. §1692c(b) by communicating with Irena LeBlanc for purposes other than to obtain location information for Plaintiff, by disclosing Plaintiff's debt to her, and by calling Ms. LeBlanc multiple times.
 - b. Defendant violated 15 U.S.C. §1692d and 15 U.S.C. §1692d(5) by repeatedly causing Plaintiff Grieve's telephone to ring with the intent to annoy, abuse and harass.
29. That as a result of the Defendant's FDCPA violations as alleged herein, Plaintiff became nervous, upset, anxious and suffered from emotional distress.

VI. COUNT TWO

(Telephone Consumer Protection Act of 1991
and 47 C.F.R.64.1200, et seq.)

30. Plaintiff repeats, re-alleges and incorporates by reference the preceding and succeeding paragraphs in this Complaint as if each of them was reprinted herein below.
31. The Defendant at all times material and relevant hereto, unfairly, unlawfully, intentionally, deceptively and/or fraudulently violated the TCPA, 47 U.S.C. §227, et seq. and 47 C.F.R. 14.1200, et seq. and TCPA, 47 U.S.C. §227(b)(1)(A)(iii) by initiating telephone calls to Plaintiff's telephone service and/or using an artificial and/or prerecorded voice to deliver messages without having the consent of Plaintiff or after Plaintiff revoked any prior consent to leave such messages.
32. The acts and/or omissions of the Defendant at all times material and relevant hereto, as described in this complaint, were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.
33. The acts and/or omissions of the Defendant at all times material and relevant hereto, as described in this complaint, were not acted or omitted pursuant to 47 C.F.R. §64.1200(f)(2).
34. As a causally-direct and legally proximate result of the above violations of the TCPA, the Defendant at all times material and relevant hereto, as described in this Complaint, caused the Plaintiff to sustain damages as a result of their numerous telephone calls that harassed, annoyed and abused Plaintiff, and disturbed her peace and tranquility at home and elsewhere.
35. As a causally-direct and legally proximate result of the above violations of the TCPA, the Defendant at all times material and relevant hereto, as described in this Complaint, caused the Plaintiff to sustain damages and experience severe emotional distress.
36. As a causally-direct and legally proximate result of the above violations of the TCPA, the Defendant at all times material and relevant hereto, as described in this Complaint, is liable to actual damages, statutory damages, treble damages, and costs and attorneys fees.
37. Plaintiff received multiple telephone calls to her cellular telephone from an automatic telephone dialing system and/or an artificial and/or prerecorded voice entitling Plaintiff to Five Hundred Dollars and No Cents (\$500.00) for each artificial and/or prerecorded telephone call pursuant to the TCPA, 47 U.S.C. §227(b)(3)(B).
38. The Defendant caused said telephone calls of an artificial and/or prerecorded nature to be placed willfully and/or knowingly entitling Plaintiff to a maximum of treble damages, pursuant to TCPA, 47 U.S.C. §227(b)(3).

WHEREFORE, Plaintiff respectfully request that judgment be entered against the Defendant for:

- (a) Actual damages;

- (b) Statutory damages pursuant to 15 U.S.C. §1692k and 47 U.S.C. §223(b)(3)(B).
- (c) Treble statutory damages pursuant to 47 U.S.C. §227b(3).
- (d) Costs, disbursements and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k.
- (e) For such other and further relief as may be just and proper.

VI. JURY DEMAND

Please take notice that Plaintiff demand trial by jury in this action.

Dated: March 6, 2009

S/KENNETH R. HILLER
Kenneth R. Hiller, Esq.
Amanda R. Jordan, Esq.
Law Offices of Kenneth Hiller
Attorneys for the Plaintiff
6000 North Bailey Ave., Suite 1A
Amherst, NY 14226
(716) 564-3288
Email: khiller@kennethhiller.com
ajordan@kennethhiller.com